CYRUS D. MEHTA & PARTNERS PLLC
US IMMIGRATION & NATIONALITY LAW

IMMIGRATION UPDATE - APRIL 04, 2022

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Headlines:

DHS, DOL Announce Additional 35,000 H-2B Nonagricultural Visas for Second Half of FY 2022 – The Departments of Homeland Security and Labor announced a forthcoming joint temporary final rule to make available an additional 35,000 H-2B temporary nonagricultural worker visas for the second half of FY 2022. The visas will be set aside for U.S. employers seeking to employ additional workers on or after April 1, 2022, through September 30, 2022.

USCIS Announces 'Trio' of Backlog Relief Actions, Expansion of Premium Processing, Relief for Work Permit Holders – USCIS announced a "trio" of efforts, including setting new agency-wide backlog reduction goals, expanding premium processing, and working to improve timely access to employment authorization documents.

USCIS Announces FY 2023 H-1B Cap Season Updates – USCIS released several updates related to the FY 2023 H-1B cap season.

USCIS Again Extends Flexibilities for Responding to Certain Agency Requests – In response to the COVID-19 pandemic, USCIS is once again extending certain flexibilities through July 25, 2022, to assist applicants, petitioners, and requestors.

DHS Secretary Issues Statement on CDC's 'Title 42' Public Health Order Termination – Effective May 23, 2022, the CDC will terminate its Title 42 public health order requiring the expulsion of unauthorized single adults and family units arriving at land borders to protect against the spread of the virus that causes COVID-19.

DHS Extends Public Comment Period for Form I-9 Extension/Revisions – The Department of Homeland Security invites public comments on its proposed

extension and revisions to Form I-9, Employment Eligibility Verification, before it expires on October 31, 2022. DHS extended the comment period to May 31, 2022.

E-Verify Records Disposal Date Extended to May 6, 2022 – USCIS will dispose of E-Verify records that are more than 10 years old, which are those dated on or before December 31, 2011. E-Verify employers have until **May 5, 2022,** to download case information from the Historic Records Report.

CBP Announces Reopening of U.S. NEXUS/FAST Enrollment Centers – The NEXUS and U.S./Canada FAST enrollment centers in the United States will reopen April 19, 2022.

'X' Gender Marker Available on U.S. Passports Starting April 11, 2022; State Dept. Updates LGBTQI+ Traveler Advice – Starting April 11, 2022, U.S. citizens will be able to select "X" as their gender marker on their U.S. passport applications.

Breaking News: Putin Surprises World by Applying for Asylum in the United States – Mr. Putin applied for asylum on April 1, 2022, based on fear of persecution as a member of a newly defined particular social group.

ABIL Global: United Kingdom – The adjusted right-to-work check process has been extended until September 30, 2022.

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DHS, DOL Announce Additional 35,000 H-2B Nonagricultural Visas for Second Half of FY 2022

On March 31, 2022, the Departments of Homeland Security (DHS) and Labor (DOL) announced a forthcoming joint temporary final rule to make available an additional 35,000 H-2B temporary nonagricultural worker visas for the second half of fiscal year (FY) 2022. The visas will be set aside for U.S. employers seeking to employ additional workers on or after April 1, 2022, through September 30, 2022.

The agencies said the supplemental H-2B visa allocation includes 23,500 visas available to returning workers who received an H-2B visa or were otherwise

granted H-2B status during one of the last three fiscal years. The remaining 11,500 visas, which are exempt from the returning worker requirement, are reserved for nationals of Haiti, Honduras, Guatemala, and El Salvador.

The measure follows an announcement in January by DHS and DOL of the availability of 20,000 additional H-2B temporary nonagricultural worker visas for the first half of FY 2022.

Details:

- DHS news release, Mar. 31, 2022, https://www.uscis.gov/newsroom/all-news/dhs-and-dol-to-supplement-the-h-2b-cap-with-additional-visas-for-second-half-of-fiscal-year-2022

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USCIS Announces 'Trio' of Backlog Relief Actions, Expansion of Premium Processing, Relief for Work Permit Holders

U.S. Citizenship and Immigration Services (USCIS) announced on March 29, 2022, a "trio" of efforts, including setting new agency-wide backlog reduction goals, expanding premium processing, and working to improve timely access to employment authorization documents (EADs).

Reducing Backlogs

USCIS is establishing new internal goals to guide backlog reduction efforts and case processing. As part of these efforts, USCIS plans to increase capacity, expand staffing, and improve technology by the end of FY 2023. USCIS said it expects that once these measures are in place, "applicants and petitioners will receive decisions on their cases more quickly."

Expanding Premium Processing

The Department of Homeland Security announced a final rule that codifies premium processing fees and adjudication timeframes. In FY 2022, USCIS intends to begin implementing, through a phased approach, premium processing availability for Forms I-539, I-765, and I-140. USCIS said it "will also adhere to the congressional requirement that the expansion of premium processing must not cause an increase in processing times for regular immigration benefit requests."

USCIS plans to begin phased implementation by expanding premium

processing eligibility to Form I-140 filers requesting EB-1 immigrant classification as a multinational executive or manager, or EB-2 immigrant classification as a member of a profession with advanced degrees or exceptional ability seeking a national interest waiver.

Under the new rule, premium processing will be available to the following categories:

- I-140 petitions for multinational managers and National Interest Waivers (NIWs). Fee: $2,500 for adjudication within 45 days.
- I-539 applications for F-1, F-2, J-1, J-2, M-1, and M-2 will begin this fiscal year. Premium processing for E-1, E-2, E-3, L-2, H-4, O-3, P-4, or R-2 will not go into effect until FY 2025. Fee: $1,750 for adjudication within 30 days.
- I-765 applications for Optional Practical Training and Js will begin this fiscal year. Premium processing for EADs based on adjustment of status, H-4, or L-2 filings is not available. Fee: $1,500 for adjudication within 30 days.

Extending Work Authorization

USCIS said it continues to make progress toward a temporary final rule to increase the automatic extension period of employment authorization and documentation for certain renewal applicants. USCIS said this will build on progress made in recent months in streamlining many EAD processes, including extending validity periods for certain EADs and providing expedited work authorization renewals for healthcare and childcare workers. USCIS said the goal is to ensure that certain individuals will not lose their work authorization while their applications are pending.

Details:

- USCIS news release, Mar. 29, 2022, https://www.uscis.gov/newsroom/news-releases/uscis-announces-new-actions-to-reduce-backlogs-expand-premium-processing-and-provide-relief-to-work

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USCIS Announces FY 2023 H-1B Cap Season Updates

U.S. Citizenship and Immigration Services (USCIS) released several updates

related to the fiscal year (FY) 2023 H-1B cap season:

- USCIS has received enough electronic registrations during the initial registration period to reach the FY 2023 H-1B numerical allocations (H-1B cap), including the advanced degree exemption (master's cap). Registrants accounts will now reflect one of the following statuses for each registration: submitted, selected, denied, or invalidated-failed payment.
- FY 2023 H-1B cap petitions may be filed with USCIS starting April 1, 2022, including those petitions eligible for the advanced degree exemption, if based on a valid, selected registration.

Details:

- USCIS FY 2023, H-1B Cap Season Updates, https://www.uscis.gov/newsroom/alerts/fy-2023-h-1b-cap-season-updates
- USCIS H-1B Electronic Registration Process page, https://www.uscis.gov/working-in-the-united-states/temporary-workers/h-1b-specialty-occupations-and-fashion-models/h-1b-electronic-registration-process
- USCIS H-1B Cap Season page, https://www.uscis.gov/working-in-the-united-states/temporary-workers/h-1b-specialty-occupations-and-fashion-models/h-1b-cap-season

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USCIS Again Extends Flexibilities for Responding to Certain Agency Requests

In response to the COVID-19 pandemic, U.S. Citizenship and Immigration Services (USCIS) is once again extending certain flexibilities through July 25, 2022, to assist applicants, petitioners, and requestors. USCIS said this may be the final extension of the flexibilities. The agency will consider a response received within 60 calendar days after the due date set forth in the following requests or notices before taking any action, if the issuance date listed on the request or notice is between March 1, 2020, and July 25, 2022, inclusive:

- Requests for Evidence
- Continuations to Request Evidence (N-14)
- Notices of Intent to Deny
- Notices of Intent to Revoke
- Notices of Intent to Rescind

- Notices of Intent to Terminate regional centers
- Motions to Reopen an N-400 Pursuant to 8 CFR 335.5, Receipt of Derogatory Information After Grant

In addition, USCIS will consider a Form I-290B, Notice of Appeal or Motion, or Form N-336, Request for a Hearing on a Decision in Naturalization Proceedings (Under Section 336 of the INA), if:

- The form was filed up to 90 calendar days from the issuance of a decision USCIS made; and
- The agency made that decision between November 1, 2021, and July 25, 2022, inclusive.

Details:

- USCIS alert, Mar. 30, 2022, https://www.uscis.gov/newsroom/alerts/uscis-extends-flexibility-for-responding-to-agency-requests-1

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DHS Secretary Issues Statement on CDC's 'Title 42' Public Health Order Termination

Department of Homeland Security Secretary Alejandro Mayorkas released a statement on April 1, 2022, in response to the Centers for Disease Control and Prevention's (CDC) determination that effective May 23, 2022, it will terminate its Title 42 public health order requiring the expulsion of unauthorized single adults and family units arriving at land borders to protect against the spread of the virus that causes COVID-19.

According to reports, a migrant surge is possible once Title 42 is lifted, and misinformation is a possibility. "Title 42 remains in place until May 23 and, until then, DHS will continue to expel single adults and families encountered at the southwest border," he warned. Once the Title 42 order is no longer in place, he said, DHS will process individuals encountered at the border "pursuant to Title 8, which is the standard procedure we use to place individuals in removal proceedings. Nonetheless, we know that smugglers will spread misinformation to take advantage of vulnerable migrants. Let me be clear: those unable to establish a legal basis to remain in the United States will be removed."

Secretary Mayorkas said DHS is increasing its capacity to process new arrivals, evaluate asylum requests, and quickly remove those who do not qualify. DHS will increase personnel and resources as needed and has redeployed more than 600 law enforcement officers to the southwest border, he said. The CDC said, "With CDC's assistance and guidance, DHS has and will implement additional COVID-19 mitigation procedures." CDC said that the termination "will be implemented on May 23, 2022, to enable DHS time to implement appropriate COVID-19 mitigation protocols, such as scaling up a program to provide COVID-19 vaccinations to migrants and prepare for resumption of regular migration under Title 8."

Details:

- "Statement by Secretary Mayorkas on CDC's Title 42 Order Termination," Apr. 1, 2022, https://www.dhs.gov/news/2022/04/01/statement-secretary-mayorkas-cdcs-title-42-order-termination
- "CDC Public Health Determination and Termination of Title 42 Order," Media Statement, Apr. 1, 2022, https://www.cdc.gov/media/releases/2022/s0401-title-42.html

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DHS Extends Public Comment Period for Form I-9 Extension/Revisions

The Department of Homeland Security (DHS) invites public comments on its proposed extension and revisions to Form I-9, Employment Eligibility Verification, before it expires on October 31, 2022. DHS extended the comment period to May 31, 2022.

Details:

- Federal Register notice, 87 Fed. Reg. 18377 (Mar. 30, 2022), https://www.govinfo.gov/content/pkg/FR-2022-03-30/pdf/2022-06687.pdf

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E-Verify Records Disposal Date Extended to May 6, 2022

U.S. Citizenship and Immigration Services (USCIS) announced on April 1, 2022, that it will dispose of E-Verify records that are more than 10 years old, which

are those dated on or before December 31, 2011. E-Verify employers have until **May 5, 2022,** to download case information from the Historic Records Report, USCIS said.

Employers must record the E-Verify case verification number on the corresponding Form I-9 Employment Eligibility Verification, or attach a copy of the case details page to the Form I-9. Employers should retain the Historic Records Report with the Forms I-9, the agency said.

Details:

- E-Verify announcement, Apr. 1, 2022, https://bit.ly/3qXb7gG
- "E-Verify Records Retention and Disposal," USCIS Fact Sheet, Jan. 20, 2021, https://www.e-verify.gov/sites/default/files/everify/factsheets/E-VerifyNARAFactSheet.pdf
- "Instructions to Download Historic Records Reports in E-Verify," USCIS, https://www.e-verify.gov/sites/default/files/everify/infosheets/DownloadNARAReportsinE-Verify.pdf

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CBP Announces Reopening of U.S. NEXUS/FAST Enrollment Centers

U.S. Customs and Border Protection (CBP) announced on March 31, 2022, that the NEXUS and U.S./Canada FAST enrollment centers in the United States will reopen April 19, 2022. NEXUS allows expedited clearance for pre-approved, low-risk Canadian travelers upon arrival in the United States, and FAST allows expedited clearance into the United States for pre-approved, low-risk commercial drivers from Mexico and Canada.

Starting April 5, 2022, conditionally approved applicants may schedule interviews at U.S. NEXUS and U.S./Canada FAST enrollment centers in the United States on the Trusted Traveler portal. NEXUS and FAST enrollment centers in Canada remain closed until further notice. Applicants may enter the United States to complete their interview, but must meet all applicable travel requirements, CBP said.

CBP noted that there is a backlog of applications to be processed by a limited number of open enrollment centers.

Details:

- CBP release, Mar. 31, 2022, https://www.cbp.gov/newsroom/national-media-release/cbp-announces-reopening-us-nexusfast-enrollment-centers
- Trusted Traveler portal, https://ttp.dhs.gov/
- "Fact Sheet: Guidance for Travelers to Enter the U.S. at Land Ports of Entry and Ferry Terminals," Dept. of Homeland Security, https://www.dhs.gov/news/2021/10/29/fact-sheet-guidance-travelers-enter-us-land-ports-entry-and-ferry-terminals

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'X' Gender Marker Available on U.S. Passports Starting April 11, 2022; State Dept. Updates LGBTQI+ Traveler Advice

Starting April 11, 2022, U.S. citizens will be able to select "X" as their gender marker on their U.S. passport applications. The option will become available for other forms of documentation next year, Secretary of State Antony Blinken said in a statement released March 31, 2022.

Secretary Blinken said the Department of State (DOS) "is setting a precedent as the first federal government agency to offer the X gender marker on an identity document." In addition to male and female, the third gender marker is intended for "nonbinary, intersex, and gender nonconforming individuals"—"unspecified or another gender identity," he said.

DOS has also updated its advice for LGBTQI+ travelers.

Details:

- Dept. of State release, Mar. 31, 2022, https://www.state.gov/x-gender-marker-available-on-u-s-passports-starting-april-11/
- Dept. of State advice for LGBTQI+ travelers, https://travel.state.gov/content/travel/en/international-travel/before-you-go/travelers-with-special-considerations/lgbtqi.html

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Breaking News: Putin Surprises World by Applying for Asylum in the United

States

In a stunning development after reports that Russian President Vladimir Putin was "self-isolating" with little communication in recent days, he surfaced at the U.S.-Mexico border and announced on April 1, 2022, that he has applied for asylum in the United States.

In a wide-ranging "60 Minutes" interview, Mr. Putin said:

People may be surprised to hear news. But when people say I am liar, they are not kidding. Was lying for years about my hatred of West, and especially of United States. Is all gaslighting. Really I love you guys and am jealous. I want America to be my forever home. My bad reputation bugs me. I tire of sneering and smirking and poisoning my way through life. I suffer from existential dread. I live in prison of my own making. My dead eyes reveal my despair. My advisers all hate me. I ask you: Do I look happy? Incident in Ukraine is blown out of proportion. Is all big misunderstanding, but meanwhile I'm not safe. My prospects in Russia are dim. So I now apply for asylum in USA, surprise! Your worst nightmare now begs for your mercy!

Reaction was swift. President Biden, seeming to speak for many world leaders, said, "I am gobsmacked. No, I mean it. No joke, folks!" A European Union spokesperson said, "Well, thank goodness all of that unpleasantness is finally over! Pass the moscato." When asked, the U.S. Department of Justice would only say that the Attorney General is handling Mr. Putin's case "with rubber gloves." In the unlikely event that Mr. Putin is granted U.S. asylum, it is unclear where the unpopular tyrant would be able to live. Rumors are that Madame Tussauds Wax Museum has an opening for a despised mannequin.

Mr. Putin has applied for asylum based on fear of persecution as a member of a newly defined particular social group, "dictators in imminent danger of being toppled in a situation of their own making due to escalating insane, brutal, murderous, and repressive behavior with little or no attention paid to logistics." Dr. Hedwig Bierhals, a professor of history and an expert on dictatorial downfalls at the University of Snicketshire, said Mr. Putin's asylum claim was unique and unprecedented. "It'll be an interesting one to watch," she told the Daily Blabber. "We'll see if he can make a case for it. It's historic, regardless of the outcome. Perhaps Kim Jong-un will be next."

Mr. Putin will be representing himself. According to reports, many attorneys

who were approached to represent him scattered like roaches in sunlight. One attorney, who wishes to remain anonymous, said from his undisclosed location, "I wouldn't defend Mr. Putin's *borscht*, let alone represent him in an asylum case." Responding to rumors that Rudy Giuliani was being considered, a spokesperson said he was out of town kissing Mr. Putin's assets and was unavailable for comment.

Mr. Putin had a final remark: "See how I tell you West is gullible and weak. This whole thing is one more gaslight. In reality, I hold you all in utter contempt. You are as insects and tiniest bugs I will crush under my imperial feet. Asylum, I spit on you! Make Russia Great Again! And one more thing: How do you say it? 'Happy Fools of the April Day!' "

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ABIL Global: United Kingdom

The adjusted right-to-work check process has been extended until September 30, 2022.

The COVID-19 pandemic-related video call temporary adjusted right-to-work check process was scheduled to end on April 5, 2022. However, in a welcome development, it has been extended until September 30, 2022. This means that employers can continue to use the adjusted process to check copies of right-to-work documents over a video call.

The extension is mainly to give employers more time to become comfortable with the new digital Identification Document Validation Technology (IDVT) checking process for British and Irish citizens due to launch on April 6, 2022. This means that employers who do not wish to start using the new IDVT process now will benefit longer from the adjusted process for checking British and Irish citizen employees. Beginning October 1, 2022, if they wish, employers will still be able to check original documents from British and Irish citizens without using the IDVT.

Beginning April 6, 2022, employers must perform an online check if the person has a biometric residence permit. It will not be possible to carry out an original document (manual) check or an adjusted check (over video) if the person has a biometric residence permit.

Details:

- Right-to-Work Checks: What Employers Need to Know, Kingsley-Napley, https://www.kingsleynapley.co.uk/services/department/immigration/slp/right-to-work-checks
- Right-to-Work Checks: An Employer's Guide, UK Home Office, https://www.gov.uk/government/publications/right-to-work-checks-employers-guide

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Firm in the News

Cyrus Mehta conducted a one hour presentation under the auspices of the Practising Law Institute on March 29, 2022 entitled “Immigration Relief for Ukrainian Refugees: What the United States is Currently Offering.” The video recording is available here https://www.pli.edu/programs/immigration-relief-for-ukrainian-refugees-what-the-united-states-is-currently-offering?t=ondemand. The PowerPoint presentation can be found at http://blog.cyrusmehta.com/2022/04/immigration-relief-for-ukrainian-refugees-what-the-united-states-is-currently-offering-2.htmla

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